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31 UNITED STATES OF AMERICA

32 UNITED STATES DISTRICT COURT

33 FOR THE CENTRAL DISTRICT OF CALIFORNIA

34 WESTERN DIVISION
35 UNITED STATES OF AMERICA,) NO. CR 05-316-DSF
36)
37 Plaintiff,) **GOVERNMENT'S RESPONSE TO DEFENDANT**
38 v.) **RICHARD LEONARD'S RESPONSE TO**
39) **GOVERNMENT'S MEMORANDUM REGARDING**
40) **RESTITUTION FROM RICHARD LEONARD**
41 JOHN S. LIPTON, et al.,) RESTITUTION HEARING:
42 Defendants.) Date: July 27, 2009
43) Time: 8:30 a.m.
44)
45)
46)
47)
48)

1 Plaintiff, United States of America, by and through its
2 counsel of record, Assistant United States Attorney Ranee A.
3 Katzenstein and Trial Attorneys Lori A. Hendrickson, Ellen M.
4 Quattrucci, and Danny N. Roetzel, Department of Justice, Tax
5 Division, hereby files its Response to Defendant Richard
6 Leonard's Response to Government's Memorandum Regarding
7 Restitution from Richard Leonard.

8 The government's Response is based on the attached
9 memorandum of points and authorities; the record and file in this
10 case; and any additional evidence and argument that the Court
11 receives prior to or at the hearing on defendant LEONARD's
12 restitution.

13 Dated: July 23, 2009

Respectfully Submitted,

15 THOMAS P. O'BRIEN
16 United States Attorney

17 CHRISTINE C. EWELL
18 Assistant United States Attorney
Chief, Criminal Division

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22 /s/Ellen Quattrucci
23 LORI A. HENDRICKSON
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25 DANNY N. ROETZEL
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26 Attorneys for Plaintiff
27 United States of America

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

4 In its Sentencing Memorandum, the government recommended
5 that defendant RICHARD B. LEONARD ("defendant" or "LEONARD") be
6 ordered to pay restitution in the amount of \$3,000,000.00. The
7 total tax loss and interest due to the Internal Review Service as
8 a result of the conspiracy to which LEONARD pleaded guilty
9 exceeds \$3.5 million. Defendant LEONARD argues that a \$3 million
10 restitution order should not be imposed because: (1) he had no
11 meaningful opportunity to address the government's claims because
12 he does not have access to certain worksheets of the government;
13 and (2) his nominee corporation shielded only a small amount
14 income which included (a) purchases made with credit cards
15 associated with his nominee Costa Rican corporation and (b) an
16 additional \$10,000 in income deposited into his trust account in
17 1999 - not the total \$1.92 million he received in Genesis funds.
18 These arguments should be rejected.

II

ARGUMENT

A. DEFENDANT LEONARD HAS HAD ACCESS TO THE DOCUMENTS USED TO CALCULATE THE TAX DUE AND OWING OF HIS CO-DEFENDANTS FOR OVER TWO YEARS.

Defendant LEONARD claims that he has "no way, and likely will never have a way" to defend against the government's tax calculations. Def. Mem. at 2. He further claims that because "disclosure laws restrict what the government can disclose to Mr.

1 Leonard about its own calculations regarding the taxes of the
2 alleged co-conspirators" he should not be ordered to pay any
3 restitution. Defendant LEONARD misstates the facts.

4 On February 11, 2009, the government provided defendant
5 LEONARD with a tax computation for each of his co-defendants.
6 These documents were filed under seal with the Court (Docket
7 Entry 730). These documents inform defendant LEONARD of the
8 amount of tax due and how that tax was calculated by the IRS.
9 Most importantly, these calculations are based entirely upon
10 documents produced to defendant LEONARD in discovery.

11 Specifically, defendant LEONARD was provided with the name
12 of the nominee Costa Rican corporation (as well as the nominee
13 trust accounts) used by each of his co-conspirators. Defendant
14 LEONARD was also provided with the bank account records
15 associated with each of the Costa Rican corporations (and the
16 previously used trust accounts) as well as any other offshore
17 accounts used by any of his co-defendant. The bank account
18 records contain the checks issued from the Genesis Fund as
19 distributions to each of the co-defendants. With respect to any
20 deductions or tax payments used in the tax computations,
21 defendant LEONARD was also provided with any tax returns filed by
22 his co-defendants in discovery. All the documents necessary to
23 calculate the loss determined by the IRS were provided to
24 defendant LEONARD in discovery.

25 The government did not provide defendant LEONARD with a
26 discrete set of documents - the spreadsheets which summarize the
27 omitted items of income of his co-defendants. The IRS created a
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1 document similar to Exhibit B of defendant LEONARD's Supplemental
2 Sentencing Position Memorandum for each co-defendant and Mr.
3 George "Bo" Boeck. However, defendant LEONARD did not ask for
4 the government for this information until July 14, 2009 - one day
5 before briefing on the restitution issue was due. On July 15,
6 2009, the day briefing was due on this matter, the government
7 declined to provide this information to defendant LEONARD because
8 disclosure laws prohibit the IRS from disclosing return and
9 return information to third parties such as defendant LEONARD and
10 his counsel¹. The IRS's workpapers are not necessary for
11 defendant LEONARD's expert to calculate the income received by
12 each of defendant LEONARD's co-defendants; all the documents
13 necessary to complete the tax computations were provided in
14 discovery. Defendant LEONARD has had these documents for over
15 two years and could verify the IRS's computations if he chose to
16 do so.

17 Because defendant LEONARD has had access to all the
18 documents necessary to compute the loss caused by the conspiracy
19 he joined, restitution should be ordered in the amount of \$3
20 million.

21 **B. DEFENDANT LEONARD USED HIS NOMINEE COSTA RICAN CORPORATION**
22 **TO EVADE PAYMENT OF TAX ON OVER \$1.9 MILLION IN INCOME**
23 **RECEIVED FROM THE GENESIS FUND.**

24 Defendant LEONARD, in contradiction to the factual basis he
25 admitted in his plea agreement, now claims that he only evaded

26 ¹The government can provide information subject to Federal
27 Rule of Criminal Procedure 16, such as the discovery and the tax
computations themselves, but the work papers do not fall into
either of these categories.

1 tax on income of \$10,000 (and the amount of purchases made on
2 credit cards associated with his nominee corporation). Defendant
3 LEONARD asks this Court to believe he opened a Costa Rican bank
4 account to evade taxes on \$10,000 but not the other \$1.92 million
5 he deposited into this and other nominee accounts. See Exhibit B
6 to Defendant LEONARD's Supplemental Sentencing Position
7 Memorandum. Defendant LEONARD's clear attempt to minimize his
8 conduct should be rejected.

9 Defendant LEONARD pleaded guilty to Count 68 of the
10 indictment and a one-count information charging a violation of 26
11 U.S.C. § 7201. As part of the Supplemental Information,
12 defendant LEONARD admitted that he used nominees and nominee bank
13 accounts to hide his income and assets. Supplemental
14 Information, ¶ 7. Defendant LEONARD contends that he shouldn't
15 be taxed on the additional \$1.9 in income because his nominee -
16 Mr. Tinoco - had control over the money. Def. Mem. at 5. The
17 same can be said for any nominee. Indeed, that is the precise
18 definition of a nominee:

19 A party who holds bare legal title for the benefit
20 of others or who receives and distributes funds
for the benefit of others.

21 *Black's Law Dictionary*, p. 1072. Defendant LEONARD admitted that
22 he used the Costa Rican corporation and the associated bank
23 accounts for the purpose of evading taxes. Factual Basis, ¶ 21.
24 Defendant LEONARD further admitted that he owed substantial
25 income tax for the years 1999 - 2002 - not the \$2,500 he now
26 contends. Factual Basis, ¶ 26.

27 There is no dispute that the \$1.92 million of Genesis funds
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1 was transferred into nominee entities that defendant LEONARD used
2 for the purpose of evading taxes. Accordingly, he should be
3 ordered to pay restitution in the amount of \$3 million, the full
4 amount of loss from the conspiracy, as requested by the
5 government.

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III

CONCLUSION

3 For all the foregoing reasons, the government respectfully
4 requests the Court to order defendant LEONARD to make restitution
5 to the Internal Revenue Service in the amount of \$3,000,000 for
6 the Criminal Conspiracy to which he pleaded guilty.

8 Date: July 23, 2009 Respectfully Submitted,

THOMAS P. O'BRIEN
United States Attorney

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